

REMARKS

This responds to the Office Action dated November 22, 2006.

In the Office Action, claims 1-20 are noted as pending in the application, claims 1-20 stand rejected, no claims are objected to and no claims are allowed. No claims have been withdrawn from consideration. The claims have been amended to overcome the rejections and new claims have been added.

Drawings

Applicant appreciates the indication that the drawings are acceptable.

Specification

Amendments are made to the specification as noted. The amendments to paragraphs 20 and 21 are supported by the text at paragraph 19, lines 2-3. The amendment to paragraph 22 is supported by FIG. 5 and the text in paragraph 22. The amendments are made to paragraph 27 to conform the paragraph to the formal drawings filed October 26, 2006. The amendment to paragraph 36 corrects a grammatical error.

Rejections

Claims 1-3, 5-10 and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by *Phalin* (4,405,058). Claims 4, 5, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Phalin*. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Biggins* (4,042,143) in view of *Phalin*. These rejections are respectfully traversed.

Applicant's Disclosure

A novel and improved method and apparatus are provided for preparing a beverage with drink ware whose rim is coated with a spice, for example a dry granular, flaked, shaved or powdered substance. For example, a receptacle will hold the spice

and use gravity to more efficiently use the spice, reduce waste and to more completely coat the rim of the drink ware.

In one example, a receptacle or container 1 can be combined with a rim dish 2 holding a sponge or other substance for a wetting agent and a lid 3 for covering the combination. The container 1 and the rim dish 2 have a shape and diameter (1a and 1b) to accommodate large diameter drink ware. See FIG. 2.

The container 1 may include a dome or other raised surface extending toward the center point 4 of the container (FIG. 6). The raised portion gradually descends toward the perimeter of the container terminating at a preferably flat inner portion extending outward and forming a well, recess or other lower, collecting portion, labeled in the specification as a level plane 6. The spice collects at the level plane 6 through gravity. The level plane is flat for a sufficient distance (radially for example) to allow enough spice to reside in the level plane for coating the rim of a drink ware. The level plane permits a quantity of spice to rest on the level plane and form a quantity of spice having a relatively constant depth across the extent of the level plane. As a result, dipping a rim in any portion of the level plane will produce the same amount of coating on the drink ware rim for any location in the level plane, assuming the spice is level. Conversely, dipping a drink ware rim into a curved bottom will produce different amounts of coating, depending on where the rim is dipped. The raised portion may be a continuous and smooth surface with a constant curvature, or may have other configurations. [See paragraph 20.]

The outer wall of the container extends upwardly from the level plane 6 to the rim 12. The outer wall is high enough to contain the spice and in one example to accept the rim dish 2 in a nesting fashion. The internal dimension of the outer wall is preferably large enough to accommodate most sizes of drink ware, and the outer dimension of the raised portion in the example shown in the specification is small enough to accommodate most sizes of drink ware without the drink ware rim contacting the raised portion when the drink ware is centered in the container. By way of example, conventional drink ware may have opening diameters of about four inches, plus or minus about two inches. The height of the outer wall is preferably at least as high as

the depth of the application of spice to the drink ware rim, for example about 1/4 inch, but in the example described in the specification, the height is sufficient to also accommodate the sealing with and/or the nesting of other components such as the rim dish 2. The height of the outer wall may be about twice the vertical height of the raised portion, [see, claim 11 as originally filed,] and the height is about four times the vertical height of the raised portion in the configuration shown in FIG. 1. As noted in the specification, the drawings show the relative dimensions to scale. [See, Specification, paragraph 0027, line 32.] The height of the outer wall may, for example, be about two inches. [See paragraph 21.]

In the example shown in FIG. 1, the height of the raised portion is about 25% of the height of the outer wall, and in the example of the outer wall being 2 inches high [paragraph 21], the raised portion would be about one-half inch. As noted in original claim 9, the outer wall is higher than the raised portion, and in original claim 10, it is at least twice the height of the raised portion.

The rim dish 2 provides an area for a sponge or other substance 7 to support and suspend a wetting agent for applying moisture to the rim of the drink ware. The perimeter walls of the rim 8 (FIG. 5) are higher than the sponge to avoid spilling liquid, for example when pressing a rim into the sponge. The rim dish may also be provided with a raised structure in the form of an interior barrier or wall 9 and having an elevated manual holding area in the form of a finger and thumb grasp/post or other grasping point 10. The grasping point protects the user and reduces the possibility that the user touches the wetting agent or the sponge in use. The grasping point is preferably higher than the sponge area and higher than the interior barrier wall 9. [See paragraph 24.]

Cited Prior Art

Phalin, U.S. Pat No. 4,405,058, relates to a container and a method for forming the container, such as an aluminum can. The container 50 includes a flange 51 and a side wall 52 and a bottom designated 53. The bottom has a downwardly-facing circumferential flat 54 and a domed center section 55. The side wall 52 has a height that is substantially greater than the vertical height of the dome 55. [See, column 3,

lines 60-66, where diameter is less than the height, and column 9, lines 9-16, where diameter is about 3 inches and the height about 4.4 inches.] Additionally, it is not believed that the container has a diameter sufficient to receive drink ware. In any case, nothing in *Phalin* teaches or suggests the combination of the reference with any of the other references of record. The purpose of *Phalin* is to produce a container having a largely uniform side wall thickness with a reduced number of steps. There is no teaching or suggestion that one skilled in the art would look to *Phalin* to combine with any of the other references of record to produce a container. Clearly, Applicant has taught inventions patentable over *Phalin*.

Biggins teaches a double seal container having a base and side walls along with a lid and a seal plug. Nothing in *Biggins* teaches or suggests forming a container with uniform wall thicknesses relating in any way to *Phalin*, and nothing in *Biggins* relates to any of the considerations or issues raised in *Phalin*. Likewise, nothing in *Phalin* suggests a container having a lid or seal plug of any of the forms discussed in *Biggins*. Therefore, there is no teaching or suggestion for combining these two references. Moreover, there is no teaching or suggestion for combining any of these two references with any of the other references of record.

Other references include *Lancette*, U.S. Patent No. 3,450,096, Franco, U.S. Patent No. 6,265,010 and *Propp*, U.S. patent publication 2004/0206302. *Lancette* fails to teach or suggest a level plane or a convex raised portion, which elements are a part of one or more of the claims. Additionally, *Franco*, Design Patent No. 291,181, fails to teach or suggest suitable relative wall heights, such as the opening size relative to the height of the container, or the height of the raised portion to the height of the outer wall. Applicant also encloses a declaration establishing priority over *Propp*.

Claims

Consider now the claims in the application. Claim 1 is an independent apparatus claim and recites in part:

"a recessed portion having an interior area extending toward a center of the receptacle and an exterior area extending away from the center of the receptacle;

"a raised portion having a convex shape and connected to the interior area of the recessed portion extending upward and toward the center of the receptacle a first distance; and

"an outer wall portion connected to the exterior area and extending at least partly upwardly a second distance greater than the first distance to a rim forming an opening that has a maximum opening dimension greater than the second distance."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or "a raised portion having a convex shape" and "an outer wall portion connected to the exterior area and extending at least partly upwardly a second distance greater than the first distance to a rim forming an opening that has a maximum opening dimension greater than the second distance". *Phalin* has a side wall higher than the opening dimension, and *Lancette* has a concave bottom surface. With a concave bottom surface, the drink ware rim will likely be coated with different depths of spice, depending on what radial position in the container the drink ware rim enters the material. *Franco* (D291,181) has a dome that is the same height as the rim of the receptacle and could interfere with rimming drink ware of a number of different sizes. *Phalin* would not be combined with any of the other references, and *Franco* and *Lancette* would not be combined to produced the claimed structure. Clearly claim 1 is patentable over the references, taken singly or in combination.

The claims 2-13 are dependent directly or indirectly from independent claim 1 and are asserted as being patentable for the same reasons as discussed above with respect to claim 1, for the additional combinations in the dependent claims as well as for the additional limitations recited in the dependent claims. Note claim 4 reciting in part "wherein the raised portion extends upward to a top-most portion of the raised portion at

a center of the receptacle and wherein a distance from the recessed portion to the top-most portion is greater than approximately 1/2 inch." Note also claim 5 reciting "wherein the distance is approximately three quarter inch." Claim 6 recites in part "wherein the recessed portion includes a substantially flat surface extending from the interior area to the exterior area." Claim 10 recites "wherein the second distance is at least twice the first distance," and claim 11 recites "wherein the second distance is approximately twice the first distance." Claim 12 recites the distance is "approximately two inches." Clearly these claims are patentable over the art.

Claim 14 is an independent apparatus claim and recites in part:

"an outer wall portion extending downwardly a first distance from the upper rim to a base portion, the base portion having a substantially flat surface facing upwardly toward the opening and extending inwardly toward a center from the outer wall portion to a raised portion, wherein the raised portion extends inwardly from the base portion substantially constantly upwardly toward a center of the receptacle and wherein the raised portion has a vertical height approximately half the first distance."

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or "a substantially flat surface facing upwardly toward the opening and extending inwardly toward a center from the outer wall portion to a raised portion, wherein the raised portion extends inwardly from the base portion substantially constantly upwardly toward a center of the receptacle and wherein the raised portion has a vertical height approximately half the first distance". The references fail to teach or suggest the claimed combination, taken singly or in combination. *Phalin* has a side wall substantially greater than the center height, and *Lancette* has a concave bottom surface. *Franco* (D291,181) has a dome that is the same height as the rim of the receptacle and could interfere with rimming the drink ware.

The claims 15-18 are dependent directly or indirectly from independent claim 14 and are asserted as being patentable for the same reasons as discussed above with respect to claim 14, for the additional combinations in the dependent claims as well as for the additional limitations recited in the dependent claims.

Claim 19 is an independent apparatus claim and recites in part:

“an outer wall portion extending vertically downwardly a first distance from the upper rim to a base portion, the base portion having a substantially flat surface facing upwardly toward the opening and extending inwardly toward a center from the outer wall portion to a raised portion, wherein the raised portion extends inwardly from the base portion substantially constantly upwardly toward a center of the receptacle and wherein the raised portion has a vertical height approximately half the first distance; and

“a round rimming dish sized to fit at least partly within the round container, the dish having a recessed area for receiving a coating material for coating a rim of a drink ware, and also having a raised area in the dish sized sufficiently to allow manual grasping of the raised area.”

None of the cited references taken singly or in combination teach or suggest the claimed combination, the recited elements quoted above, or the recited outer wall, base portion or rimming dish. *Phalin* and *Biggins* could not be combined, and none of the other references teach or suggest singly or in combination the recited elements.

Claim 20 is dependent from independent claim 19 and is asserted as being patentable for the same reasons as discussed above with respect to claim 19, for the additional combination in the dependent claim as well as for the additional limitations recited in the dependent claim.

New claims 21-28 recite features not found in the prior art, including the opening size and the raised portion as recited. These claims are patentable over the prior art.

Reconsideration of the application and claims in view of the foregoing amendments and remarks is respectfully requested. Early notice of allowance thereof is earnestly solicited.

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Please charge any additional fees that may be due or credit any overpayments to our deposit Account No. 50-0655. If a petition is required in conjunction with this paper, please consider this a request for such a petition.

This response is being filed with an Information Disclosure Statement and a Declaration of Marc Radow.

Respectfully submitted,

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